STATE OF MICHIGAN

COURT OF APPEALS

SANDRA BROWN,

Plaintiff-Appellant,

v

SELECTIVE-MAPLE CREEK, INC.,

Defendant-Appellee.

UNPUBLISHED
February 21, 2003

No. 234791
Oakland Circuit Court
LC No. 00-023986-CZ

Before: Markey, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order denying her motion to vacate an arbitration award and granting defendant's motion to confirm the award. We affirm.

Plaintiff and defendant entered into a purchase agreement for a condominium unit that was under construction. Throughout the course of the construction, plaintiff repeatedly visited the unit and identified defects in the construction. Specifically, plaintiff found that the horizontal steel beam was significantly short. Defendant suggested a repair for this beam, which the Township of West Bloomfield accepted. Plaintiff alleges that defendant made a second repair to the beam without notice to the township or plaintiff.

The purchase agreement provides, in part:

> Closing shall take place at Builder's office at a time to be set by Builder but, in any event, no later than five (5) days after mailing of a written notice from Builder indicating that the Residence has been completed (as so defined in Paragraph 8, above). Failure of Purchaser to timely close within this five (5) day period is a default under this Purchase Agreement. In the event Purchaser does not close on the Unit/Residence as required hereunder, then, in Builder's discretion, Builder may extend the Closing date for a reasonable time (not to exceed 21 days) and Purchaser agrees to pay Builder, in addition to $150.00 per day (as set forth in Paragraph A of the Request For Contingency Addendum, if applicable), any and all costs Builder sustains by reason of such extension including, without limitation, loss of interest (at 2.00% over NBD prime) on the balance due under this Purchase Agreement from the date of the original Closing through and including the date of the actual Closing.

The purchase agreement also provides that "[t]he Residence shall be deemed completed as of the date of issuance of a temporary or final certificate of occupancy or its equivalent by the governmental entity having appropriate jurisdiction to issue same."

On December 4, 1998, the certificate of occupancy was issued. The closing was scheduled for December 16, 1998. On December 11, 1998, plaintiff's counsel wrote defendant's project manager, advising him of the safety concerns. Plaintiff did not close on December 16. On December 17, 1998, defendant's president sent plaintiff a letter declaring her in default.

Because the purchase agreement contained an arbitration clause, plaintiff filed a demand for arbitration. After allowing plaintiff to take depositions and after reviewing the supplemental arguments and hearing arguments, the arbitrator granted defendant's petition to dismiss the arbitration demand. The arbitrator found that under the contract and applicable law, plaintiff was obligated to close, and her failure to do so barred her demand for arbitration.

Plaintiff filed an application in circuit court seeking to vacate the award. The circuit court denied plaintiff's application to vacate the arbitration award and granted defendant's motion to confirm the award. The circuit court held that the arbitrator did not exceed his authority or commit legal error and that the arbitrator's conclusion that plaintiff defaulted under the purchase agreement, thus waiving any right to argue about acts and events occurring after the closing date, was based upon the application of basic contract law.

Review of a statutory arbitration award is limited. The reviewing court may confirm the award, vacate the award if obtained through fraud, duress, or other undue means, or modify the award or correct errors apparent on the face of the award. *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001). The court may vacate the award: (a) if the award was procured by corruption, fraud, or other undue means; (b) if there was evident partiality, corruption, or misconduct by an arbitrator; (c) if the arbitrator exceeded his or her powers; or (d) if the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing in a manner that substantially prejudiced a party. MCR 3.602(J)(1). We review de novo a trial court's decision to enforce, vacate, or modify a statutory arbitration award. See *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 496-497; 475 NW2d 704 (1991).

Plaintiff contends that the arbitration award should be vacated and that the arbitrator committed errors of law. We disagree and affirm the trial court's decision.

"Arbitrators derive their authority to act from the parties' arbitration agreement." *Krist, supra* at 62. Arbitrators exceed the scope of their authority when they act beyond the material terms of the contract or in contravention of controlling principles of law. *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982). Where it is alleged that arbitrators have exceeded their scope of authority, "a reviewing court's ability to review an award is restricted to cases in which an error of law appears from the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record." *Id.* at 428-429. "[W]here it clearly appears on the face of the award or the reasons for the decision as stated, being substantially a part of the award, that the arbitrators through an error in law have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been

made, the award and decision will be set aside." *Id.* at 443, quoting *Howe v Patrons' Mutual Fire Ins Co of Michigan*, 216 Mich 560, 570; 185 NW 864 (1921).

In addition, courts may not upset awards for reasons going to the merits of the claim, *Gordon Sel-Way, supra* at 500, engage in contract interpretation, which is a question for the arbitrator, *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999), or review claims that the arbitrator erred in his or her factual findings, *id.* at 75. Rather, "[i]t is only the kind of legal error that is evident without scrutiny of intermediate mental indicia which remains reviewable . . . ." *DAIIE, supra* at 429.

Plaintiff provides no case law for her position that a party to a purchase agreement has the right to refuse to proceed with the closing when that party believes that a certificate of occupancy issued by a governmental entity is void because of a building code violation. Although she cites numerous cases from foreign jurisdictions, we find none of these cases applicable to the issue at hand. We conclude that the arbitration award does not contain an error of law discernible on its face.

Plaintiff also contends that the arbitrator manifestly erred when he failed to conclude that the building code was violated, when he failed to conclude that the building official did not enforce the applicable building code provisions, and when he failed to conclude that the certificate of occupancy was void.

Plaintiff's argument is dependent upon the arbitrator's findings of fact. "[O]ur duty is to review the arbitrator's findings, treating all facts as final unless found in manifest disregard of the evidence." *Jaffa v Shacket*, 114 Mich App 626, 635; 319 NW2d 604 (1982). After reviewing the evidence, we conclude that the arbitrator's findings, that the certificate of occupancy was not procured by fraud and that the certificate of occupancy was not void, were not made in manifest disregard of the evidence.

Plaintiff further contends that the arbitrator committed manifest error when he failed to conclude that plaintiff complied with the requirements of paragraph 16 of the purchase agreement and when he failed to find that defendant did not cure the "defaults" within the time frame provided under the purchase agreement.

Paragraph 16 of the purchase agreement states:

> BUILDER'S DEFAULT. In the event that Builder shall default under this Purchase Agreement, Purchaser shall be required to provide Builder with written notice of such default by certified mail, return receipt requested. If Builder fails to cure such default within thirty (30) days after receipt of notice for construction related items, and within five (5) days of receipt of notice for any other items, Purchaser shall have the right to receive a refund of any and all monies paid to Builder hereunder, as Purchaser's sole remedy.

These errors require interpretation of the parties' agreement, which is a question for the arbitrator, *Konal, supra* at 74, and are dependent upon findings of fact.

The arbitrator found that the December 11, 1998 and December 15, 1998 letters from plaintiff's attorney were not "notices of default." The arbitrator further stated that "[e]ven if Dr. Brown's verbal notice to the Township in November about the beam in the basement were to be considered as a notice of default, the default was cured by Selective when Mr. Gentile, the Director of the Township Building Department, approved the recommended "fix" and later issued a full Certificate of Occupancy on December 4, 1998."

After reviewing the record, we find nothing to indicate that the December 11, 1998 letter was sent certified mail as required by paragraph 16. In addition, Gentile averred in his affidavit that the installation of the steel column was an acceptable modification for the beam. Therefore, we conclude that the arbitrator's findings, regarding plaintiff's failure to comply with the purchase agreement and defendant's cure of the defect were not made in manifest disregard of the evidence.

The trial court did not err in denying plaintiff's petition to vacate the arbitration award and in granting defendant's petition to confirm the award.

We affirm.

/s/ Jane E. Markey
/s/ Michael R. Smolenski
/s/ Patrick M. Meter